



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

31 MAR 2008

Reply To
Attn Of: ORC-158

Pamela Mull
Vice President and General Counsel
Potlatch Corporation and Potlatch Forest Products Corporation
601 W. First Avenue, Suite 1600
Spokane, Washington 99201

Re: Avery Landing Superfund Site
Shoshone County, Idaho

Dear Ms. Mull:

This letter follows a general notice letter that the U.S. Environmental Protection Agency ("EPA") sent to Potlatch Corporation on January 5, 2007, in connection with the Avery Landing Superfund Site ("Site"), located in Shoshone County, Idaho. In that letter, EPA notified Potlatch Corporation of its potential responsibility under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §9607(a), for the cleanup of the Site. Recently, EPA has learned that Potlatch Forest Products Corporation is the current owner of a portion of the Site. Therefore, EPA is notifying Potlatch Forest Products Corporation of its potential responsibility under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §9607(a), for the cleanup of the Site. This letter refers to both Potlatch Corporation and Potlatch Forest Products Corporation as "Potlatch."

In the last few months, EPA and Potlatch have discussed the performance of an Engineering Evaluation/Cost Analysis ("EE/CA") and Potlatch informed EPA that it is willing to conduct the EE/CA for the Site.

Attached to this letter is a proposed Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") and a draft Statement of Work for the Site. So that negotiations can proceed in an expeditious manner, please respond within 30 days of receipt of this letter with a written proposal that includes the following elements:

- A paragraph-by-paragraph response to EPA's Statement of Work and draft Settlement Agreement;

- A detailed description of the work plan identifying how Potlatch plans to proceed with the work;
- A demonstration of Potlatch's technical capability to carry out the EE/CA, including the identification of the firm(s) that may actually conduct the work or a description of the process they will use to select the firm(s);
- A demonstration of Potlatch's capability to finance the EE/CA; and
- A statement of willingness by Potlatch to reimburse EPA for costs incurred in overseeing Potlatch's conduct of the EE/CA.

Your response to this letter should be sent to:

United States Environmental Protection Agency, Region 10
 Janet A. Magnuson
 Office of Regional Counsel
 1200 Sixth Ave., Suite 900, ORC-158
 Seattle, Washington 98101

The factual and legal discussions in this letter are intended solely to provide notice and information, and such discussions are not to be construed as a final EPA position on any matter set forth herein. Due to the seriousness of the environmental and legal problems posed by the conditions at the Site, EPA urges that you give immediate attention and prompt response to this letter. If you have any technical questions, please contact Earl Liverman at 208-664-4858 and if you have any legal questions, please contact Janet Magnuson at 206-553-1797.

Sincerely,



Chris D. Field, Unit Manager
 Emergency Response Unit
 Office of Environmental Cleanup

Enclosures

cc: Earl Liverman
 Janet Magnuson
 James Wernitz, Director, EPA Idaho Operations Office
 Geoffrey W. Harvey, Idaho DEQ

DRAFT STATEMENT OF WORK AVERY LANDING

I. INTRODUCTION

This Statement of Work (SOW) outlines the approach for work to be completed for the Avery Landing site, a former railroad light maintenance and refueling facility located near Avery, Shoshone County, Idaho. This SOW was prepared in connection with an Administrative Settlement Agreement and Order on Consent (Settlement Agreement) between the U.S. Environmental Protection Agency (EPA), the Potlatch Corporation and the Potlatch Forest Products Corporation (Respondents). All of the work as set forth in this SOW shall be performed by the Respondents, except the work specifically reserved to be performed by EPA. The work to be completed under this SOW shall include preparation and delivery of the following documents:

A. Engineering Evaluation/Cost Analysis (EE/CA) Work Plan (draft and final) and EE/CA Report (draft and final):

1. Sampling and Analysis Plan (SAP) (draft and final);
2. Health and Safety Plan (HASP) (draft and final); and
3. Treatability Study Work Plan (draft and final) and Treatability Study Report (draft and final).

B. Biological Assessment (BA) Work Plan (draft and final) and BA Report (draft and final).

C. Cultural Resources Evaluation Work Plan (draft and final) and Cultural Resources Evaluation Report (draft and final).

II. ENGINEERING EVALUATION/COST ANALYSIS

The EE/CA shall be prepared following EPA's 1993 *Guidance on Conducting Non-Time-Critical Actions Under CERCLA* (EPA540-R-93-057), and shall contain the following sections:

A. Site Characterization

The EE/CA should summarize available data on the physical, demographic, and other characteristics of the Site and surrounding areas. These data may be available from previous investigations, or other activities by Respondents, EPA, U.S. Army Corps of Engineers (USACE), U.S. Fish and Wildlife Service (USFWS), and the Idaho Department of Environmental Quality (IDEQ) at the Site. New data must also be collected and analyzed to support removal action alternatives.

1. Site description and background

Provide the following types of current and historical information where available and appropriate: site location; type of facility and historical/ and operational history; structures and topography; geology and soil information; surrounding land use and populations; sensitive ecosystems; and meteorology.

2. Previous cleanup activities

Describe any previous cleanup activities at the site, including for each the following: scope and objectives; duration; amount of money spent; nature and extent of hazardous substances, pollutants, or contaminants treated or controlled; and technologies and/or treatment levels used.

3. Source, nature, and extent of contamination

Describe existing site characterization data, including the location of contaminants; quantity, volume, size, or magnitude of the contamination; physical and chemical attributes of the contaminants; and potential exposure pathways to human health and the environment.

4. Analytical Data

Describe any significant analytical findings in narrative discussion.

5. Streamlined risk evaluation

The streamlined risk evaluation should focus on the specific problem that the removal action is intended to address. The evaluation uses sampling data from the site to identify the chemicals of concern, provides an estimate of how and to what extent humans and ecological receptors might be exposed to these chemicals, and provides an assessment of the health effects associated with these chemicals. The risk evaluation may identify only contaminants of concern in the affected media, contaminant concentrations, and the toxicity associated with the chemical to justify taking an action. In some situations, exposure pathways can be identified as an obvious threat to human health or the environment by comparing EE/CA contaminant concentrations to standards that are potential chemical-specific applicable or relevant and appropriate requirements (ARARs) and To-Be-Considered (TBC) materials. When potential ARARs or TBCs do not exist for a specific contaminant, risk-based chemical concentrations should be used. A streamlined risk evaluation projects the potential risk and health problems occurring if no cleanup action is taken at the site.

6. Applicable or Relevant and Appropriate Requirements (ARARs) and To- Be-Considered (TBC) Materials

A detailed analysis of ARARs and TBC materials will be necessary to assure that the removal action alternatives adequately address these requirements.

B. Identification of Removal Action Objectives

The general removal action objective is to reduce the potential detrimental affects of the contaminants of concern to human health and the environment.

1. Statutory Limits on Removal Actions

If applicable, a discussion regarding section 104 (c)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, describing the statutory limits for Fund-financed removal actions is required.

2. Determination of removal scope

The scope and objectives of the removal action must be clearly defined.

3. Determination of removal schedule

A general schedule is needed for all phases of the removal activities, from conducting the EE/CA to completing the removal action. Factors to be considered that can affect the schedule include time needed for conduct of the treatability study, biological assessment, and cultural resources evaluation, as well as statutory requirements, available financial and technical resources, and weather.

C. Identification and Analysis of Removal Action Alternatives

Based on the analysis of the nature and extent of contamination and on the cleanup objectives developed for the site, several technology alternatives will be subject to detailed analysis, including but not limited to contaminant containment, thermal desorption, *in-situ* and *ex-situ* solidification/stabilization, land application, and off-site disposal. Whenever practicable, the alternatives selection process should consider the CERCLA preference for treatment over conventional containment or land disposal approaches to address the principal threats at the Site. The alternatives are evaluated against the short- and long-term aspects of three broad criteria: effectiveness; implementability; and cost.

1. Effectiveness

Each alternative is evaluated against the scope of the removal action and against each specific objective for final disposition of the wastes and the level of cleanup desired, including overall protection of public health and the environment and ability to achieve removal action objectives.

2. Implementability

This criterion addresses the technical and administrative feasibility of implementing an alternative and the availability of various services and materials required during its implementation.

3. Cost

Each alternative is evaluated to determine its projected costs, including direct and indirect capital costs, post removal site control, and the present worth of alternatives that will last longer than 12 months.

D. Treatability Investigation

Bench-scale treatment testing will be performed to adequately evaluate the technology alternatives, including, but not limited to thermal desorption, *in-situ* and *ex-situ* solidification/stabilization, and land application, including evaluating performance, determining process sizing, and estimating cost in sufficient detail to support the removal action selection process.

1. Treatability Study Work Plan

The work plan will provide the technical details and procedures for conducting the treatability study (TS) of contaminated soils at the Site. The EPA's 1992 *Guide for Conducting Treatability Studies under Comprehensive Environmental Response, Compensation, and Liability Act* (EPA/540/R-92/071a) will serve as guidance for preparing this work plan and designing TS activities. At a minimum, the work plan format will address the project description and site background, technology alternative descriptions, test objectives, specialized equipment and materials, experimental procedures, treatability test plan, analytical methods, data management, data analysis and interpretation, health and safety, and residuals management.

2. Treatability Study Report

At the completion of the treatability study activities, a TS report will be prepared documenting project activities, results, conclusions, and recommendations. The TS report will be prepared following EPA's 1992 *Guide for Conducting Treatability Studies under Comprehensive Environmental Response, Compensation, and Liability Act* (EPA/540/R-9/071a).

E. Sampling and Analysis Plan

The Sampling and Analysis Plan (SAP) details the methods and procedures concerning analytical methods employed during site-related sampling and data evaluation. The SAP incorporates the information from two separate but related reports: the field sampling plan (FSP) and the quality assurance project plan (QAPP).

Draft and final versions of the SAP shall be submitted in EPA for review and approval in accordance with the schedule set forth in this SOW.

1. At a minimum, the FSP format will address site background, sampling objectives, sample location and frequency, sample designation, sampling equipment and procedures, and sampling handling and analysis.
2. At a minimum, the QAPP format will address project description, project organization and responsibilities, quality assurance objectives for measurement, sampling procedures, sample custody, calibration procedures, analytical procedures, data reduction, validation, and reporting, internal quality control, performance and systems audits, preventive maintenance, data assessment procedures, corrective actions, and quality assurance report.

F. Health and Safety Plan

A site health and safety plan (HASP) will be prepared to support the field effort. The specific information required in a HASP is listed in 29 CFR 1910.120.

G. Comparative Analysis of Removal Action Alternatives

Once the alternatives have been described and individually assessed against the criteria, a comparative analysis must be conducted to evaluate the relative performance of each alternative in relation to each of the criteria. This is in contrast to the preceding analysis in which each alternative was analyzed independently without consideration of other alternatives. The purpose of the comparative analysis is to identify the advantages and disadvantages of each alternative relative to one another so that key tradeoffs that would affect the response selection can be identified.

H. Recommended Removal Action

The EE/CA will ultimately identify the action that best satisfies the evaluation criteria based on the comparative analysis in the previous section. This description should briefly describe the evaluation process used to develop the recommended action. EPA will be responsible for determining the final action.

This determination will be placed in the administrative record file concurrently with the EE/CA. This section of the EE/CA may enhance public involvement efforts by describing clearly why the alternative was recommended. Because the EE/CA is open to public comment and evaluation and because EPA is required to prepare a written response to significant comments, the recommended alternative may be modified for the final alternative described in the Action Memorandum.

I. Community Relations

The National Contingency Plan (NCP) and CERCLA outline a variety of community relations requirements to promote communication. The following are requirements for this non-time critical removal action:

1. Designate a Community Relations Contact.

Respondents shall designate a person to assist with coordinating activities with the EPA's Community Involvement Coordinator.

2. Conduct Community Interviews

In accordance with section 300.415(n) of the NCP, EPA, as lead agency, will conduct interviews with local officials, community residents, and other interested parties. The purpose of these interviews is to solicit information about community concerns, information needs, and how or when citizens would like to be involved in the removal action. This information will be used as background for the Community Relations Plan (CRP).

3. Prepare the CRP

Pursuant to section 300.415(n) of the NCP, EPA will prepare a CRP before the EE/CA is completed. The CRP will be site-specific that relates community relations techniques and approaches deemed appropriate and relevant to the Site.

4. Establish an Information Repository

EPA will establish an Information Repository. The Information Repository is a project file or collection of materials related to this specific non-time critical removal action. Respondent will work with EPA to establish the information repository, as requested.

5. Prepare Presentation Materials

Respondent will work with EPA to produce information materials to be used for community outreach, as requested.

6. Provide Public Notice of Availability of EE/CA

EPA will publish a public notice describing EPA's preferred alternative and EE/CA results and announcing its availability for review must be published in the major local newspaper.

7. Establish Administrative Record

EPA, as lead agency, will establish an administrative record, publish a notice of availability of the administrative record file, hold a public comment period, and develop a written response to significant comments. The administrative record may include site-specific data and comments, guidance documents, technical references, and documents that reflect views of the public (including Respondents), concerning the selection of the removal action. The EE/CA Approval Memorandum, the EE/CA and the Action Memorandum are critical components of the final administrative record file. Respondents will assist EPA with the following actions:

a. Establish the Administrative Record File

The file must be made available for public inspection and copying when the EE/CA is made available for public comment. It should be located at the Information Repository. Respondent will work with EPA to produce information for the administrative record file, as requested.

b. Publish Notice of Availability of the Administrative Record File

EPA will publish a public notice when the EE/CA is placed in the administrative record file and is available for comment. This notice will also be used to announce a 30-day public comment period on the EE/CA.

c. Hold Public Comment Period

A 30-day minimum comment period is required, but could be extended upon request.

d. Develop Written Response to Significant Comments

EPA will prepare written responses to comments received during the public comment period, and these responses will be included in the administrative record file. Respondents will assist, as requested.

III. BIOLOGICAL ASSESSMENT

A. Respondents shall prepare a Biological Assessment (BA) Work Plan (draft and final) for the Site. The work plan will provide the technical details and procedures for conducting a biological assessment (BA) at the Site.

The BA work plan will be prepared following the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) 1998 *Final ESA Consultation Handbook: Procedures for Conducting Section 7 Consultations and Conferences*.

B. At the completion of the biological assessment, a BA Report (draft and final) shall be prepared by Respondents documenting whether the preferred removal actions is likely to adversely affect listed species or designated critical habitat; jeopardize the continued existence of species that are proposed for listing; or adversely modify proposed critical habitat.

The BA report will be prepared following the USFWS and NMFS 1998 *Final ESA Consultation Handbook: Procedures for Conducting Section 7 Consultations and Conferences*.

IV. CULTURAL RESOURCES

A. Respondents shall prepare a Cultural Resources Evaluation Work Plan (draft and final) for the Site. The purpose of the evaluation is to recognize and document building, structures, or places (historic and archaeological sites) of importance to history or prehistory.

The work plan shall follow the Idaho State Historic Preservation Office and Archaeological Survey of Idaho *Guidelines for Documenting Archaeological and Historical Surveys*.

B. At the completion of the archaeological survey, a Survey Report (draft and final) shall be prepared by Respondents.

The Survey Report shall follow the Idaho State Historic Preservation Office and Archaeological Survey of Idaho guidelines for an *Archaeological and Historical Survey Report*.

V. SCHEDULE

Activities completed under this SOW shall be completed according to the following schedule:

SCHEDULE OF PROJECT DELIVERABLES		
TASK	DELIVERABLES	DUE DATE
Identify Respondent Project Coordinator	Letter	Within 5 days of the Effective date of the Settlement Agreement
Identify Respondent Consultant	Letter	Within 5 days of the Effective date of the Settlement Agreement
EE/CA Work Plan	Draft Work Plan	Within 10 days of the effective date of the Settlement Agreement
	Final Work Plan	Within 15 days after receipt of EPA comments on draft Work Plan
Treatability Study Work Plan	Draft Work Plan	Within 5 days of EPA EE/CA Work Plan approval notification
	Final Work Plan	Within 15 days after receipt of EPA comments on draft Treatability Study Work Plan
Sampling and Analysis Plan (SAP)	Draft SAP	Within 5 days of EPA EE/CA Work Plan approval notification
	Final SAP	Within 15 days after receipt of EPA comments on draft SAP
Health and Safety Plan (HASP)	Draft HASP	Within 5 days of EPA EE/CA Work Plan approval notification
	Final HASP	Within 15 days after receipt of EPA comments on draft HASP
EE/CA Report	Draft EE/CA Report	Within 180 days of EPA EE/CA Work Plan approval notification
	Final EE/CA Report	Within 30 days after receipt of EPA comments on draft EE/CA Report
Biological Assessment (BA) Work Plan	Draft Biological Assessment Work Plan	Within 30 days of EPA EE/CA Work Plan approval notification
	Final Biological Assessment Work Plan	Within 15 days after receipt of EPA comments on draft BA Work Plan
Biological Assessment (BA) Report	Draft Biological Assessment Report	Within 60 days of EPA BA Work Plan approval notification
	Final Biological Assessment Report	Within 15 days after receipt of EPA comments on draft BA Report
Cultural Resources Evaluation Work Plan	Draft Cultural Resources Evaluation Work Plan	Within 30 days of EPA EE/CA Work Plan approval notification
	Final Cultural Resources Evaluation Work Plan	Within 15 days after receipt of EPA comments on draft Cultural Resources Evaluation Work Plan

Cultural Resources Survey Report	Draft Cultural Resources Survey Report	Within 60 days of EPA Cultural Resources Evaluation Work Plan approval notification
	Final Cultural resources Survey Report	Within 15 days after receipt of EPA comments on draft Cultural Resources Survey Report

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF:
Avery Landing Superfund Site
Avery, Idaho

The Potlatch Corporation and
Potlatch Forest Products Corporation

Respondents

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT

U.S. EPA Region 10
CERCLA Docket No. _____

Proceeding Under Sections 104, 106(a), 107
and 122 of the Comprehensive
Environmental Response, Compensation,
and Liability Act, as amended, 42 U.S.C. §§
9604, 9606(a), 9607 and 9622

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XXX.	EFFECTIVE DATE

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Potlatch Forest Products Corporation and the Potlatch Corporation ("Respondents"). This Settlement Agreement provides for the performance of an Engineering Evaluation/Cost Analysis ("EE/CA"), a Biological Assessment and a Cultural Resources Evaluation by Respondents and the reimbursement of future response costs incurred by the United States at or in connection with the "Avery Landing Superfund Site" (the "Site") generally located in Shoshone County, approximately one mile west of the town of Avery, Idaho.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA"). This Settlement Agreement is further supplemented by authority vested in the President of the United States by Section 31 f(e) of the Federal Water Pollution Control Act of 1990, 33 U.S.C. § 2701 et seq.

3. EPA has notified the State of Idaho (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondents recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement. Respondents agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon EPA and upon Respondents and their successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Settlement Agreement.

6. Respondents are jointly and severally liable for carrying out all activities required by this Settlement Agreement. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Settlement Agreement, the remaining Respondents shall complete all such requirements.

7. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondents shall be responsible for any noncompliance with this Settlement Agreement.

III. DEFINITIONS

8. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

b. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

c. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXXII.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

e. "IDEQ" shall mean the Idaho Department of Environmental Quality and any successor departments or agencies of the State.

f. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 26 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), and Paragraph 36 (emergency response).

g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

h. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

i. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXXI). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

j. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

k. "Parties" shall mean EPA and Respondents.

l. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

m. "Respondents" shall mean the Potlatch Corporation and the Potlatch Forest Products Corporation.

n. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

o. "Site" shall mean the Avery Landing Superfund Site, encompassing approximately 10 acres, located in the St. Joe River valley approximately 1 mile west of the town of Avery, Shoshone County, Idaho and depicted generally on the map attached as Appendix 1.

p. "State" shall mean the State of Idaho.

q. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the EE/CA, as set forth in Appendix 2 to this Settlement Agreement, and any modifications made thereto in accordance with this Settlement Agreement.

r. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

s. "Work" shall mean all activities Respondents are required to perform under this Settlement Agreement.

IV. FINDINGS OF FACT

9. The following are the Findings of Fact:

a. Chicago, Milwaukee, St. Paul & Pacific Railroad (Milwaukee Road) owned and operated the Site from 1909 to 1977. The Site served as a switching station and light maintenance facility.

b. Milwaukee Road operated a railyard on the Site property which included a roundhouse, turn table, maintenance facility, and a 500,000 gallon above ground storage tank. Activities performed by the railroad at the facility included train refueling, the use of solvents to clean engine parts, cleaning of locomotives by hosing them down, and equipment maintenance.

c. Potlatch Forest Products Corporation is a current owner of a portion of the Site.

d. Potlatch Corporation is a former owner of a portion of the Site.

e. The Site is located in a flat, filled bank at a bend on the St. Joe River. The St. Joe River is a special resource water that is used for wildlife habitat, recreation, and as drinking water for downstream residents.

f. Throughout the Site there is a large zone of free petroleum product contamination in the groundwater and in subsurface soils at levels that exceed Idaho regulatory standards. Free product was observed floating on groundwater in monitoring and recovery wells, saturated in subsurface soils collected from soil borings, and seeping into the St. Joe River along approximately 200 feet of river bank. The earliest documented release of petroleum product from the Site seeping into the St. Joe River was reported in June 1970. Thereafter, seeps have been observed with the most recent occurring in the Fall 2007.

g. Organic and inorganic hazardous substances were detected in most of the site samples, particularly polycyclic aromatic hydrocarbons (PAHs) compounds in subsurface soils and groundwater samples that exceeded applicable state and federal risk-based guidelines.

h. In one or more soil samples, benzo[a]anthracene, benzo[b]fluoranthene, and benzo[a]pyrene exceeded their respective EPA Human Health Medium-Specific Screening Levels ("HHMSSL"); and benzo[a]anthracene, benzo[b]fluoranthene, benzo[a]pyrene, naphthalene, 2-methylnaphthalene, and 4-nitroaniline exceeded their respective State of Idaho Risk Evaluation Manual ("REM") guidelines. Arsenic also exceeded its respective HHMSSL in one soil sample, and arsenic, iron, lead, manganese, and mercury exceeded their respective REM guidelines in several soil samples.

i. In one or more groundwater samples, benzo[a]anthracene, benzo[b]fluoranthene, benzo[g,h,i]perylene, benzo[a]pyrene, chrysene, and naphthalene exceeded their respective HHMSSLs for tap water, and benzo[a]anthracene, benzo[b]fluoranthene, benzo[a]pyrene, N-nitrosodiphenyl amine, and 2-methylnaphthalene exceeded their respective REM guidelines. Aluminum, arsenic, iron, lead, and manganese exceeded their HHMSSL for tap water and/or the

drinking water Maximum Contaminant Level ("MCL"); and arsenic, iron, lead, and manganese exceeded their respective REM guidelines. In addition, the PCB Aroclor-1260 exceeded its respective REM guideline in one groundwater monitoring well.

j. For surface water, benzo[a]pyrene exceeded its Ambient Water Quality Criteria standard, while benzo[a]anthracene, benzo[b]fluoranthene, benzo[a]pyrene, and chrysene exceeded their respective REM guidelines. Aluminum, arsenic, iron, lead, and manganese exceeded their respective REM guidelines.

k. Several residents live on the Site year-round, and several more reside on the property seasonally. Access to the Site is unrestricted.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

10. Based on the Findings of Fact set forth above, and the Administrative Record supporting this EE/CA, EPA has determined that:

a. The Avery Landing Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and includes onshore facilities and navigable waters as defined in Sections 311(a)(10) of the CWA, 33 U.S.C. 1321(a), and Sections 1001(24) and (21) of OPA, 33 U.S.C. 2701(24) and (21).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). Total petroleum hydrocarbons at the Site, as identified in the Findings of Fact above, are from discharges of oil, as defined in Sections 311(a)(1) and (2) of the CWA, 33 U.S.C. § 1321(a)(1) and (2), and Sections 1001(23) and (7) of OPA, 33 U.S.C. § 2701(23) and (7).

c. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21) and/or Section 311(a)(7) of the CWA, 33 U.S.C. 1321(a)(7) and Section 1001(27) of OPA, 33 U.S.C. § 2701(27).

d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site. Respondent Potlatch Forest Products Corporation is the "owner" and/or "operator" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1). Respondent Potlatch Corporation was the "owner" and/or "operator" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

e. The conditions described in the Findings of Fact above constitute an actual or threatened of "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The actual or threatened release of hazardous substances within and from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). These factors may include, but are not limited to, the elevated concentrations of hazardous substances in soils largely at or near the surface; free product petroleum located in soils and seeping into the St. Joe River; and the actual or potential exposure of nearby human populations, animals, and aquatic organisms to such hazardous substances and oil. The presence of actual or threatened discharges of oil at the Site from vessels and/or facilities in violation of Section 311(b) of the CWA, 33 U.S.C. § 1321(b), may be an imminent and substantial threat to the public health or welfare of the United States, including fish, shellfish, wildlife, public and private property, shorelines, beaches, habitat, and/or other living and nonliving natural resources under the jurisdiction or control of the United States.

g. An EE/CA supporting a removal action is warranted at the Site in accordance with Section 300.415(b) of the NCP for reasons including potential exposure to ecological and human receptors.

VI. SETTLEMENT AGREEMENT AND ORDER

11. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

12. Respondents shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within 5 days of the Effective Date. Respondents shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 5 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor, Respondents shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 7 days of EPA's disapproval. The proposed contractor must demonstrate compliance with ANSI/ASQC E-4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002), or equivalent documentation as required by EPA. Any decision not to require submission of the contractor's QMP should be documented in a memorandum from the OSC and Regional QA personnel to the Site file.

13. Within 5 days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondents required by

this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 7 days following EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by all Respondents.

14. EPA has designated Earl Liverman of the Region 10 Environmental Cleanup Unit as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to the OSC at U.S. EPA, Region 10, Coeur d'Alene Field Office, 1910 Northwest Blvd., Suite 208, Coeur d'Alene, Idaho 83814.

15. EPA and Respondents shall have the right, subject to Paragraph 12, to change their respective designated OSC or Project Coordinator. Respondents shall notify EPA 5 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

16. Respondents shall perform, at a minimum, all actions necessary to implement the Statement of Work, attached hereto as Appendix 2 and incorporated by this reference.

17. Work Plans and Implementation.

a. Within 10 days after the Effective Date, Respondents shall submit to EPA for approval a draft EE/CA Work Plan, a draft Biological Assessment Work Plan and a draft Cultural Resources Evaluation Work Plan ("Work Plans") for performing the actions generally described in the SOW. The draft Work Plans shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement.

b. Within 10 days of EPA approval of the EE/CA work plan, Respondents shall submit a draft Sampling and Analysis Plan ("SAP") to EPA for its review and approval. The SAP will include procedures for collecting, transporting, and analyzing all samples collected at the Site, as well as procedures for quality assurance/quality control ("QA/QC"). The SAP shall comply with 40 C.F.R. 300.415(b)(4)(ii) and include a Quality Assurance Project Plan ("QAPP") as part of the EE/CA Work Plan. The QAPP should be prepared in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA/240/B-01/003, March 2001), and "EPA Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998).

c. EPA may approve, disapprove, require revisions to, or modify the draft Work Plans in whole or in part. If EPA requires revisions, Respondents shall submit a revised draft

Work Plan(s) within 10 days of receipt of EPA's notification of the required revisions. Respondents shall implement the Work Plans as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plans, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

d. Respondents shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondents shall not commence implementation of the Work Plans developed hereunder until receiving written EPA approval pursuant to Paragraph 17(c).

18. Health and Safety Plan. Within 10 days after EPA's approval of the EE/CA work plan, Respondents shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the EE/CA.

19. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondents shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondents shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

b. Upon request by EPA, Respondents shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondents shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondents shall notify EPA not less than 5 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondents to take split or duplicate samples of any samples it takes as part of its oversight of Respondents' implementation of the Work.

20. Reporting.

a. Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement every 30th day after the date of receipt of EPA's approval of the Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondents shall submit four (4) copies of all plans, reports or other submissions required by this Settlement Agreement, the Statement of Work, or any approved work plan. Respondents shall also submit such documents to the OSC in electronic form.

c. Respondents who own or control property at the Site shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA of the proposed conveyance, including the name and address of the transferee. Respondents who own or control property at the Site also agree to require that their successors comply with the immediately proceeding sentence and Sections IX (Site Access) and X (Access to Information).

21. EE/CA report. In accordance with the SOW, Respondents shall submit for EPA review and approval an EE/CA report. The EE/CA report shall include, but is not limited to:

- A. An identification of the removal objectives.
- B. An identification and comparative analysis of removal action alternatives, including an analysis of their effectiveness, cost, and ability to be implemented.
- C. Recommended removal action alternatives for each portion of the Site.

22. Biological Assessment report: In accordance with the SOW, Respondents shall submit for EPA review and approval a Biological Assessment report.

23. Cultural Resources Evaluation report: In accordance with the SOW, Respondents shall submit for EPA review and approval a Cultural Resources Evaluation report.

The EE/CA, Biological Assessment and Cultural Resources Evaluation reports shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

24. Off-Site Shipments.

a. Respondents shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

i. Respondents shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the removal action. Respondents shall provide the information required by Paragraph 21(a) and 21(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondents shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

IX. SITE ACCESS

25. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by any of the Respondents, such Respondents shall, commencing on the Effective Date, provide EPA and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

26. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within 15 days after the Effective Date, or as otherwise specified in writing by the OSC. Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as EPA deems appropriate. Respondents shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

27. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

28. Respondents shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

29. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondents.

30. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondents assert such a privilege in lieu of providing documents, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

31. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XI. RECORD RETENTION

32. Until 10 years after Respondents' receipt of EPA's notification pursuant to Section XXIX (Notice of Completion of Work), each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after Respondents' receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondents shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

33. At the conclusion of this document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Respondents shall deliver any such records or documents to EPA. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

34. Each Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA

requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. COMPLIANCE WITH OTHER LAWS

35. Respondents shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable state and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. Respondents shall identify ARARs in the Work Plans subject to EPA approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

36. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, the EPA Region 10 spill line Emergency 24-hour telephone number 206-553-1263 of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

37. In addition, in the event of any release of a hazardous substance from the Site, Respondents shall immediately notify the OSC at Region 10 spill line, 206-553-1263, and the National Response Center at (800) 424-8802. Respondents shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

38. The OSC shall be responsible for overseeing Respondents' implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

XV. PAYMENT OF RESPONSE COSTS

39. Payments for Future Response Costs.

a. Respondents shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondents a bill requiring payment that includes a Superfund Cost Organization Recovery Package Imaging Online System ("SCORPIOS") report or similar cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Respondents shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 41 of this Settlement Agreement.

b. Respondents shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party(ies) making payment and EPA Site/Spill ID number 10FT. Respondents shall send the check(s) to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

c. At the time of payment, Respondents shall send notice that payment has been made by email to acctsreceivable.cinwd@epa.gov, and to:

EPA Cincinnati Finance Office
MS-NWD
26 Martin Luther King Drive
Cincinnati, Ohio 45268

Regional Financial Management Officer
U.S. EPA Region 10
MS OMP-146

1200 Sixth Avenue, Suite 900
Seattle, WA 98101

d. The total amount to be paid by Respondents pursuant to Paragraph 39(a) shall be deposited by EPA in the Avery Landing Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

40. In the event that the payments for Future Response Costs are not made within 30 days of Respondents' receipt of a bill, Respondents shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

41. Respondents may contest payment of any Future Response Costs billed under Paragraph 39 if they determine that EPA has made a mathematical error, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the OSC. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondents shall within the 30-day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 39. Simultaneously, Respondents shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Idaho and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the EPA OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondents shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 39. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 39. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

XVI. DISPUTE RESOLUTION

42. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

43. If Respondents object to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, they shall notify EPA in writing of their objection(s) within 7 days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondents shall have 20 days from EPA's receipt of Respondents' written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

44. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Division Director level or higher will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondents' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

45. Respondents agree to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondents, or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work, or increased cost of performance.

46. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondents shall notify EPA orally within two working days of when Respondents first knew that the event might cause a delay. Within five days thereafter, Respondents shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any

measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

47. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

48. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraph 49 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (*Force Majeure*). "Compliance" by Respondents shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, the SOW, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

49. Stipulated Penalty Amounts. The following stipulated penalties shall accrue per violation per day for failure to comply with this Settlement Agreement:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$2,500	1st through 14th day
\$5,000	15th through 30th day
\$7,500	31st day and beyond

50. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and 2) with respect to a decision by the EPA

Management Official at the Division Director level or higher, under Paragraph 44 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

51. Following EPA's determination that Respondents have failed to comply with a requirement of this Settlement Agreement, EPA may give Respondents written notification of the failure and describe the noncompliance. EPA may send Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondents of a violation.

52. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. Environmental Protection Agency, Superfund Payments, Cincinnati Finance Center, P.O. Box 979076, St. Louis, MO 63197-9000, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number 10FT, the EPA Docket Number _____, and the name and address of the party(ies) making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in Paragraph 39.

53. The payment of penalties shall not alter in any way Respondents' obligation to complete performance of the Work required under this Settlement Agreement.

54. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

55. If Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 52. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(f) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(f), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(f) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Section, except in the case of a willful violation of this Settlement Agreement. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. COVENANT NOT TO SUE BY EPA

56. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondents of all obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondents and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

57. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement Agreement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

58. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definition of Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

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- a. claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definition of Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

XXI. COVENANT NOT TO SUE BY RESPONDENTS

59. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Idaho Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work or Future Response Costs.

60. Except as provided in Section XXI, Paragraph 63 these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 58 (b), (c), and (e) - (g), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

61. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

62. Respondents agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

63. The waiver in Paragraph 62 shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6972, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

XXII. OTHER CLAIMS

64. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

65. Except as expressly provided in Section XXI, Paragraph 63, and Section XIX (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

66. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. CONTRIBUTION

67.a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and

9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Future Response Costs.

b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondents have, as of the Effective Date, resolved their liability to the United States for the Work and Future Response Costs.

c. Except as provided in Section XXI, Paragraph 63, of this Settlement Agreement, nothing in this Settlement Agreement precludes the United States or Respondents from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

XXIV. INDEMNIFICATION

68. Respondents shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondents agree to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

69. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

70. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and

any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXV. INSURANCE

71. At least 10 days prior to commencing any on-Site work under this Settlement Agreement, Respondents shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of two million dollars, combined single limit, naming EPA as an additional insured. Within the same time period, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement Agreement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. FINANCIAL ASSURANCE

72. Within 30 days of the Effective Date, Respondents shall establish and maintain financial security for the benefit of EPA in the amount of \$250,000 in one or more of the following forms, in order to secure the full and final completion of Work by Respondents:

a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;

b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA;

c. a trust fund administered by a trustee acceptable in all respects to EPA;

d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work;

e. a written guarantee to pay for or perform the Work provided by one or more parent companies of Respondents, or by one or more unrelated companies that have a substantial business relationship with at least one of Respondents; including a demonstration that any such guarantor company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f); and/or

f. a demonstration of sufficient financial resources to pay for the Work made by one or more of Respondents, which shall consist of a demonstration that any such Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).

73. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondents shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 72, above. In addition, if at any time EPA notifies Respondents that the anticipated cost of completing the Work has increased, then, within 30 days of such notification, Respondents shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondents' inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

74. If Respondents seek to ensure completion of the Work through a guarantee pursuant to Subparagraph 72(e) or 72(f) of this Settlement Agreement, Respondents shall (i) demonstrate to EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (ii) resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date or such other date as agreed by EPA, to EPA. For the purposes of this Settlement Agreement, wherever 40 C.F.R. Part 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the dollar amount to be used in the relevant financial test calculations shall be the current cost estimate of \$250,000 for the Work at the Site plus any other RCRA, CERCLA, TSCA, or other federal environmental obligations financially assured by the relevant Respondent or guarantor to EPA by means of passing a financial test.

75. If, after the Effective Date, Respondents can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 72 of this Section, Respondents may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondents shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, Respondents may seek dispute resolution pursuant to Section XV (Dispute Resolution). Respondents may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

76. Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondents may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXVII. MODIFICATIONS

77. The OSC may make modifications to any plan or schedule or Statement of Work in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

78. If Respondents seek permission to deviate from any approved work plan or schedule or Statement of Work, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 77.

79. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXVIII. NOTICE OF COMPLETION OF WORK

80. When EPA determines, after EPA's review of the Final Reports, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including payment of Future Response Costs or record retention, EPA will provide written notice to Respondents. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXIX. INTEGRATION/APPENDICES

81. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement: Map of the Site (Appendix 1) and Scope of Work (Appendix 2).

XXX. EFFECTIVE DATE

82. This Settlement Agreement shall be effective the day the Settlement Agreement is signed by the Environmental Protection Agency.

The undersigned representative(s) of Respondents certify(ies) that it (they) is (are) fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party(ies) it (they) represent(s) to this document.

Agreed this ____ day of _____, 2008.

For Respondent Potlatch Corporation

By _____

Title _____

For Respondent Potlatch Forest Products Corporation

By _____

Title _____

It is so ORDERED and Agreed this _____ day of _____, 2008.

BY: _____

DATE: _____

Daniel D. Opalski, Director

Office of Environmental Cleanup

Region 10

U.S. Environmental Protection Agency